IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6152 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SHAILESHBHAI CHHANABHAI NAYKA

Versus

DISTRICT MAGISTRATE

Appearance:

1. Special Civil Application No. 6152 of 2004

MR ANIL S DAVE for Petitioner No. 1

MR KAMEN N SHUKLA for Petitioner No. 1

MR LR POOJARI AGP for Respondent No. 1-3

RULE SERVED for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE C.K.BUCH

Date of decision: 24/11/2004

ORAL JUDGEMENT

By filing this petition under Article 226 of the Constitution of India read with Articles 21 and 22 (5) of the Constitution of India, the petitioner has challenged the legality and validity of the order of detention dated 3.5.2004 passed by the District Magistrate, Navasari and Detaining Authority under the provisions of the Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as "The PASA Act" for short), whereby, the Detaining Authority has branded the present petitioner as "Boot Legger " within the meaning of Section 2 (b) of the PASA Act. At present the present petitioner has been detained at Palanpur Sub-jail at Palanpur.

2. It is alleged that the order passed by the Detaining Authority is arbitrary, illegal and bad. The order of detention is assailed on various grounds by the petitioner and Mr. Dave, learned Advocate for the petitioner has taken me through the main grounds. It is submitted that subjective satisfaction has been wrongly recorded by the Detaining Authority and the authority has not even cared while passing the grounds of detention. It is pointed out that three different offences have been referred to by the Detaining Authority in the grounds conveyed to the petitioner alongwith order of detention. As per grounds of detention, the Detaining Authority has considered three different cases registered against the petitioner, where all the offences were registered under the provisions of the Bombay Prohibition Act registered at Gandevi Police Station. The first offence is of 4.2.2004. The second offence is of 22.2.2004 and the third offence is of 26.3.2004. For the first offence allegedly committed by the petitioner, he came to be arrested on 15th March, 2004 and was enlarged on bail by the Court on that very day. Even then, it was wrongly shown in Colomn No. 5 on page No. 15 that the petitioner was absconding in the grounds of detention. The Detaining Authority has shown that the police have not arrested the petitioner for the second offence registered on 22.2.2004 but on the contrary, the petitioner was arrested by the police on 15.3.2004 for the third offence i.e. subsequent to the registration of the second offence on 22.2.2004. In the present case, the Detaining Authority has not placed reliance on statements of any person, who can claim privilege for disclosing the facts adverse to the present petitioner, so it was possible for the Detaining Authority to pass appropriate orders at the earliest on receipt of proposal from the authority. However, after 26th March, 2004, no prompt actions were taken in preparing the proposal and also in passing the order of detention under challenge.

Such delay is always fatal.

3. Today, Mr. Poojari, learned AGP has tendered affidavit filed by the District Magistrate. In response to the query raised by the Court to learned AGP, Mr. Poojari has placed reliance upon para 8 of the said affidavit filed by District Magistrate. Para - 8 of the said affidavit reads as under :-

> "para 8 :With respect to the contents of para 15 of the petition, I deny the allegations, averments and contentions made therein. I say and submit that the offences came to be registered on 04.02.04, 22.02.04 and 26.3.2004, the petitioner- detenue was arrested in first offence on 15th March, 2004, and thereafter, he enlarged on bail by the Competent Court. Thereafter, the petitioner could not be traceable. The police have inquired to the petitioner-detenue on 30th March, 2004 and statement of his wife Bhagwatiben was recorded. Therefore, again the Police has inquired at his residence on 3/4/04 and the statement of his wife was again recorded. Thus, even his wife was not knowing the whereabouts of the petitioner-detenue. Further, he was repeatedly involved in the illicit business of the foreign liquor hence, the Sponsoring Authority has also made proposal vide communication dated 05-04-04, which was received in our office on 06-04-04, and, thereafter, after applying my mind fully to the materials placed before me I formulated the grounds of passing the order of detention 03-05-04, and hence, there is no delay as such in passing the order of detention".

4. Having considered the two different statements of Bhagwatiben, wife of present petitioner dated 30.3.2004 and 3.4.2004, it transpires that the petitioner did visited his residence on 2.4.2004 and it reveals that the petitioner was not in habit of informing his wife regularly and it transpires that she had undertaken before the police authority that she will convey that the Police Officials from Prohibition Police Station are calling him and he should go to police station and in the second statement, she has stated specifically that she had discharged her obligation by conveying the message received by her. By the aforesaid conduct, it cannot be said that the petitioner would be put in the category of a person acting adversely to the public order. Even, thereafter, for one month, no appropriate order of

detention is passed. Looking to the affidavit filed by the District Magistrate, it is not possible for this court to say that explanation rendered is satisfactory.

5. For the reasons aforesaid, without entering into the merits of the other grounds agitated by the petitioner challenging the order of detention, the Court is inclined to quash and set aside the order of detention dated 3.5.2004 passed by the District Magistrate, Navasari having No. DCB/MAG/PASA/Reg.24/2004. Accordingly, this petition is allowed. The order of detention dated 3.5.2004 passed by the District Magistrate, Navasari is hereby quashed and set aside. The detenue is ordered to be set at liberty forthwith, if not required to be detained in connection with any other case. Rule is made absolute. Direct Service permitted.

(C.K. Buch, J.)

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